

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 9809

IN THE MATTER OF:

Served August 8, 2006

Application of ALI ZOHERY, Trading )  
as ZOHERY TOURS, for a Certificate )  
of Authority -- Irregular Route )  
Operations )

Case No. AP-2005-045

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District. The application is unopposed.

The Compact, Title II, Article XI, Section 7(a), authorizes the Commission to issue a certificate of authority if it finds that the proposed transportation is consistent with the public interest and that the applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission. If an applicant does not make the required showing, the application must be denied under Section 7(b).

An applicant for a certificate of authority bears the burden of establishing financial fitness, operational fitness, and regulatory compliance fitness.<sup>1</sup> A determination of compliance fitness is prospective in nature.<sup>2</sup> The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.<sup>3</sup> Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.<sup>4</sup>

**I. BACKGROUND**

Applicant proposes commencing operations with two motorcoaches. Applicant's proposed tariff contains individual ticket rates for regular tours and an hourly rate for private tours.

Applicant previously conducted passenger carrier operations in the Metropolitan District through Zohery Tours International, Inc. (ZTI). ZTI held WMATC Certificate of Authority No. 362 from October 25, 1996, until January 21, 2003, when it was revoked for respondent's willful failure to comply with the 15-person vehicle seating capacity restriction in Certificate No. 362.<sup>5</sup>

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<sup>1</sup> *In re BLS Limo Group, Inc.*, No. AP-05-195, Order No. 9569 (May 18, 2006).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *In re Zohery Tours Int'l, Inc.*, No. MP-02-46, Order No. 7005 (Jan. 21, 2003), *aff'd on reconsideration*, Order No. 7096 (Mar. 19, 2003).

When a person controlling an applicant has a record of violations, or a history of controlling companies with such a record, the Commission considers the following factors in assessing the likelihood of applicant's future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether the controlling party has made sincere efforts to correct past mistakes, and (5) whether the controlling party has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.<sup>6</sup>

Accordingly, the initial order in this proceeding directed applicant to file a notarized statement explaining why the Commission should find applicant fit as to regulatory compliance considering that ZTI's website still advertises tours and transportation in the Washington Metropolitan Area and that ZTI apparently has applied for federal authority to operate a motorcoach listed in this application.

Applicant also was directed to furnish copies of his and ZTI's financial records since 2002.

## **II. RESPONSE**

Applicant states that although ZTI still advertises through its website, "ZTI has leased its two motorcoaches to Vicar Limousine Services, Inc.," and ZTI "only advertises to generate business under its contract [with] Vicar." Applicant, however, has produced no lease and no contract to corroborate these allegations. In addition, a search of Commission files reveals no evidence that Vicar, WMATC Carrier No. 357, ever filed any such lease or contract as required by Commission regulations. Further, Vicar has no motorcoach rates on file, and the vehicle list filed as part of Vicar's most recent annual report shows no motorcoaches.

We are also concerned that the most recent records available from the Federal Motor Carrier Safety Administration's website<sup>7</sup> indicate that ZTI possesses four vehicles and employs six drivers. This seems inconsistent with applicant's allegations with respect to Vicar. We are further concerned that applicant only produced evidence of insurance for one motorcoach.

We cannot say on this record that applicant has demonstrated regulatory compliance fitness. We nevertheless commend applicant for having finally paid all of the net \$10,750 civil forfeiture assessed as part of the revocation proceeding in 2003.<sup>8</sup> Although payment was to be made within thirty days, considering the amount of the assessment and applicant's marginal annual income as revealed by applicant's

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<sup>6</sup> *In re VGA, Incorporated*, No. AP-03-73, Order No. 7496 (Oct. 29, 2003).

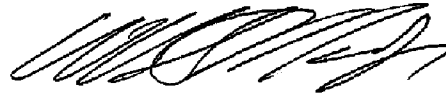
<sup>7</sup> [www.safersys.org](http://www.safersys.org).

<sup>8</sup> See Order No. 7096.

federal income tax returns for 2003 and 2004, we will extend the payment deadline to May 19, 2006, for good cause shown.

THEREFORE, IT IS ORDERED: That the application of Ali Zohery, trading as Zohery Tours, for a certificate of authority, irregular route operations, is hereby denied without prejudice.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:

A handwritten signature in black ink, appearing to read 'William S. Morrow, Jr.', is positioned above the printed name.

William S. Morrow, Jr.  
Executive Director